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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,086

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EXAMINER

WOOD, JONATHAN K

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/550,086	Applicant(s) DECOTTIGNIES ET AL.	
	Examiner JONATHAN WOOD	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the body" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to "a body" or define a body earlier in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5-6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,141,580 to *Rogers (Rogers)*.

Rogers shows a fluid dispenser comprising a fluid reservoir (10), and a dispenser head (13) mounted on the reservoir and defining a dispensing chamber (space within 13) communicating with the reservoir via an inlet valve (23 with 25) and communicating with the outside at a dispensing orifice (15) placed at the top of the head (Figure 1) via an outlet valve (14 with 17), wherein the chamber has an elastically deformable

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actuating sleeve that is flexible and internally defines a portion of the chamber (Figure 1; col. 2, line 34; col. 2, ll. 46-48) and that is depressed in order to generate a pressure inside the chamber that is high enough to close the inlet valve and to open the outlet valve (col. 2, ll. 29-42), and wherein the outlet valve forms the dispensing orifice from which the dispensed fluid can be collected (the outlet valve is defined by 14 with 17 and the dispensing orifice is formed on 14, therefore, the outlet valve forms the dispensing orifice).

Regarding claim 5, *Rogers* shows the sleeve having a stationary end (end with threads) and an opposite end forming a flexible lip (14) in leak tight abutment against a seat (17), the lip and the seat together forming the outlet valve (col. 2, ll. 35-42).

Regarding claim 6, *Rogers* shows the head having a body (20) forming a ring cooperating with the reservoir and forming an inlet valve seat (23).

Regarding claim 10, *Rogers* shows the reservoir is airless (col. 1, ll. 60-66).

5. Claims 7-9, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,238,156 to *Andris* (*Andris*).

Andris shows a fluid dispenser comprising a fluid reservoir (col. 5, line 17) and a dispenser head (Figure 1) mounted on the reservoir defining a dispensing chamber (60 with 19) communicating with the reservoir via an inlet valve (58) and communicating with the outside at a dispensing orifice (5) via an outlet valve (18), wherein the chamber comprises an elastically deformable actuating sleeve (3) that is depressed to generate pressure inside the chamber that is high enough to close the inlet valve and open the

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outlet valve (col. 9, ll. 18-24) and which extends around a rigid tube (20) having a fastening end (23 and 26) and an opposite end (8) forming an outlet valve seat.

Regarding claim 8, *Andris* shows the tube defining an internal volume (60) in which the inlet valve is received (Figure 1) and which communicates with a peripheral volume that extends around the tube inside of the sleeve (19) via through openings (62).

Regarding claim 9, *Andris* shows the tube fastened to a body (2) via the fastening end (26), the sleeve being fastened to the tube (at 13) and to the body via anchor means (50 at 41).

Regarding claims 14 and 16, *Andris* shows the sleeve provided with a cap (7) preventing access to the actuating wall, wherein the cap has a collar (13) in contact with the sleeve.

6. Claims 7 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,169,039 to *Kay et al.* (*Kay*).

Kay shows a fluid dispenser comprising a fluid reservoir (14) and a dispenser head (18) mounted on the reservoir defining a dispensing chamber (108) communicating with the reservoir via an inlet valve (42) and communicating with the outside at a dispensing orifice (22) via an outlet valve (30), wherein the chamber comprises an elastically deformable actuating sleeve (66) that is depressed to generate pressure inside the chamber that is high enough to close the inlet valve and open the outlet valve (col. 10, ll. 44-58) and which extends around a rigid tube (26) having a

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fastening end (end adjacent 22, col. 4, ll. 3-5) and an opposite forming an outlet valve seat (col. 4, ll. 25-30).

Regarding claim 11, *Kay* shows the reservoir being elongate and preferably in the form of a fine tube (Figure 1).

Regarding claim 12, *Kay* shows the dispenser having the general shape of a pen that can be grasped in the hand in the manner of a pen, so that at least one finger of the hand is placed on the actuating wall with the dispensing orifice disposed at the tip of the pen (Figure 1).

Regarding claim 13, *Kay* shows the sleeve surrounded by a substantially rigid sheath (60) that defines at least one window (53) giving access to the actuating wall.

7. Claims 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,699,300 to *Blake* (*Blake*).

Blake shows a fluid dispenser comprising a reservoir (12), a rigid tube mounted on the reservoir (11) and comprising an inlet valve (23 with 24) disposed inside of the tube, and an elastically deformable sleeve (14) surrounding the rigid tube, wherein a space (col. 5, ll. 5-7) between the rigid tube and the sleeve defines a dispensing chamber, and wherein an outlet valve and for the dispensing chamber and dispensing orifice are formed by the rigid tube (20) and the sleeve (34).

Regarding claim 19, *Blake* shows the sleeve flush with the tube in a longitudinal direction such that the dispenser orifice is formed at a distal end of the tube (Figure 1).

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Regarding claim 20, *Blake* shows the distance between a distal end of the rigid tube and the fluid reservoir remains constant during actuation of the dispenser (inherent).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kay* in view of US Patent No. 6,983,865 to *Cabarroque et al. (Cabarroque)*.

Kay shows all aspects of applicant's invention as set forth in claim 13, and further shows the sleeve provided with a cap (23). *Kay* fails to disclose the cap being able to turn on the rigid sheath and having at least one opening serving to come into register with the window in a manner such as to enable the actuating wall to be accessed through a window and through an opening, with the window and the opening being mutually in register.

However, *Cabarroque* teaches a dispenser with a cap (50) able to turn on a rigid sheath (1), with a side wall which selectively covers the actuating element (40). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Cabarroque*, to have manufactured the dispenser head cap of *Kay* utilizing the teaching of *Cabarroque* to allow the cap to rotate about the exterior of the dispenser and selectively cover the actuation element in order to prevent unwanted actuation of the dispenser (*Cabarroque*, col. 4, ll. 24-29). The combination would result in the cap being rotated to cover the actuating wall of *Kay* versus being rotated to uncover the actuating wall. It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized a window to uncover the actuating wall upon rotation versus utilizing a side wall to cover the actuating wall, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Response to Arguments

12. Applicant's arguments, see pages 9-10, filed 5/4/2009, with respect to the rejection(s) of claim(s) 4 under 35 U.S.C. 102(b) have been fully considered but they are not persuasive. Applicant argues that *Rogers* does not disclose the outlet valve forming the dispensing orifice of the device. Applicant further notes that the dispensing orifice 15 is formed on nipple 14. The outlet valve is formed by both the forward end 17 of the portion 16 and the nipple 14. Therefore, nipple 14 is a part of the outlet valve and also forms the dispenser orifice at 15. Hence, examiner contends that the outlet valve forms the dispensing orifice.

13. Applicant's arguments with respect to claim 7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754